



**Missouri
Department of
Natural Resources**

Drycleaning Environmental Response Trust (DERT) Fund

**Annual Program Report
2005**

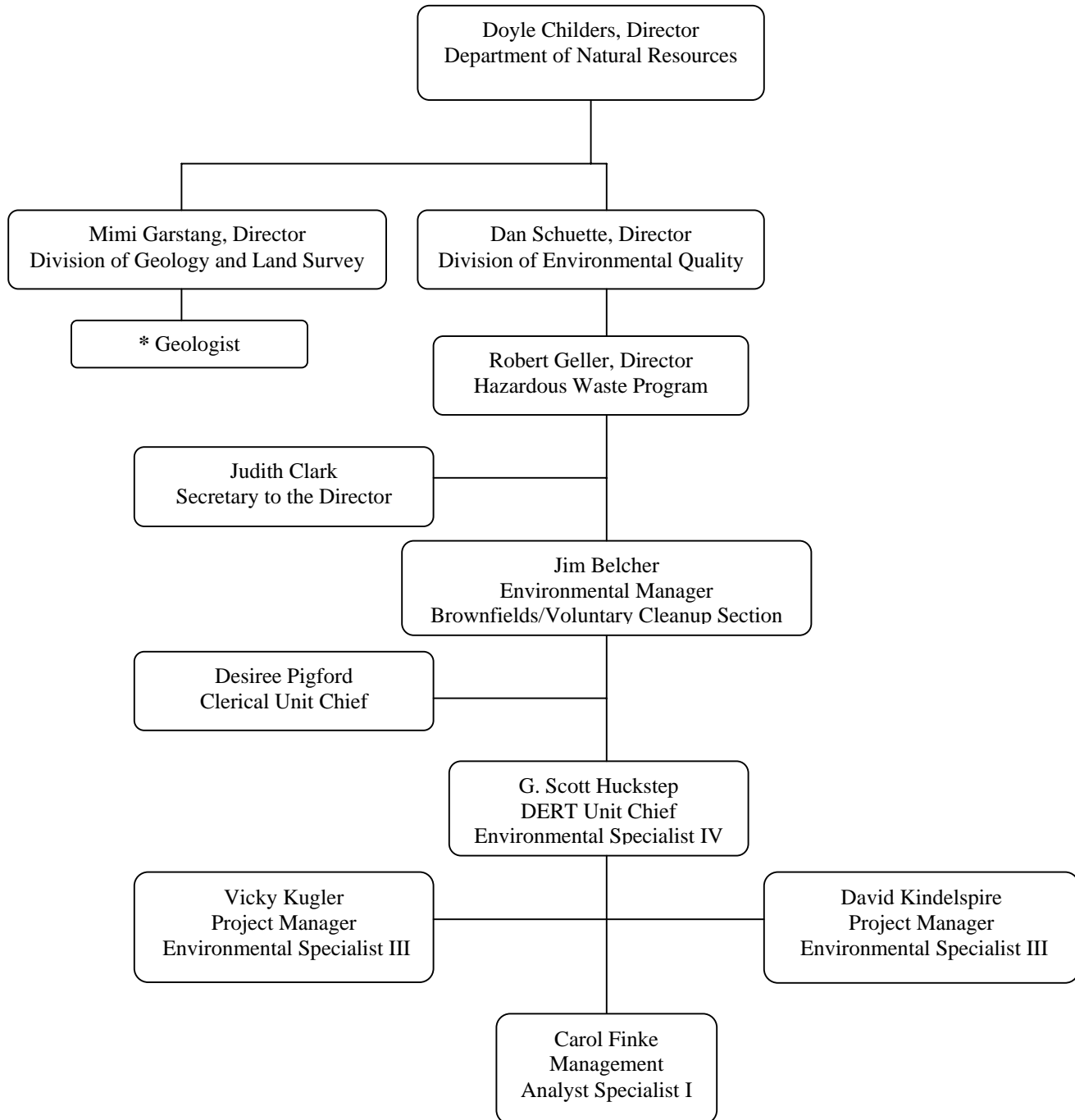
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Division of Environmental Quality
Hazardous Waste Program
Brownfields/Voluntary Cleanup Section
Drycleaning Environmental Response Trust Fund Unit
Organizational Chart



*The department's Division of Geology and Land Survey has a 0.5 FTE allocation under the DERT Fund. This allocation will not be used until FY07

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Introduction

Senate Bill 577 established the DERT Fund and Section 260.960, Revised Statutes of Missouri (RSMo) authorized the DERT Fund. The DERT fund provides funding for the investigation, assessment, and remediation of releases of chlorinated solvents from dry cleaning facilities. The DERT Fund is a state fund and is to be administered by the Hazardous Waste Program pursuant to rules promulgated by the Hazardous Waste Management Commission (Commission).

Operators of active dry cleaning facilities are required to register with the Missouri Department of Natural Resources, as outlined in Section 260.915, RSMo. Each active and operating dry cleaning facility is required to pay an annual registration surcharge based upon the number of gallons of chlorinated solvents used during the calendar year, as outlined in Section 260.935, RSMo. This includes coin-operated dry cleaning facilities. Laundry facilities located in prisons, government entities, hotels, motels, and industrial laundries are specifically exempt from the requirements of this statute. All solvent suppliers who sell or provide chlorinated solvent to a dry cleaning facility are required to pay the solvent surcharge fees to the department.

Section 260.955, RSMo, requires the department to provide an annual report to the General Assembly and the Governor regarding (1) receipts of the fund during the preceding calendar year and the sources of those receipts, (2) disbursements from the fund during the preceding calendar year and the purposes of those disbursements, (3) the extent of corrective action taken during the preceding calendar year, and (4) the prioritization of sites for expenditures from the fund.

Program Staff

The DERT Fund consists of 4.5 Full Time Employees (FTE). This includes one Environmental Specialist IV that supervises the DERT Fund Unit and conducts oversight of dry cleaner investigations and remediation, two Environmental Specialist III's to conduct oversight of dry cleaner investigations and remediation, one Management Analyst Specialist to conduct development of a database to track and plan expenditures and revenues, and a 0.5 position in the Division of Geology and Land Survey for geological review of work plans and reports. Minimal staffing allows the department to maximize the cleanup funding and services offered to participants of the DERT Fund.

Hiring started as soon as possible; however, Section 260.925, RSMo, did not allow expenditures from the DERT Fund until on or after July 1, 2002. General revenue contemplated during the crafting of Senate Bill 577, to hire staff to begin the rulemaking process was not authorized. A statewide hiring freeze in 2002 further delayed the process of hiring until late 2002. The Environmental Specialist IV began on January 6, 2003, and

the MAS I began on April 16, 2003. The two Environmental Specialist III's began on December 12, 2005 and December 16, 2005.

Rule Development History

Section 260.905, RSMo, authorizes the Hazardous Waste Management Commission to promulgate rules as necessary to carry out the program. A stakeholder work group of dry cleaning industry members, municipalities, consultants, and department staff convened in March 2003 to draft proposed rules. Even though the deadline of July 1, 2002 had passed to promulgate and adopt rules and regulations for the DERT Fund, the rule work group decided that drafting the proposed rules was warranted to achieve the intent of the statute to provide funding for dry cleaner solvent cleanups. This group met four times from March 2003 through September 2003 in meetings open to the public. The stakeholder group reviewed and commented on numerous drafts of the proposed rules during these meetings.

These proposed rules were necessary to describe the procedures for conducting the assessment, investigation, and remediation of contaminated active and abandoned dry cleaner sites and to help prevent future releases of dry cleaning solvents. These proposed rules also described reporting requirements, eligible expenses to the DERT Fund, how to apply to the DERT Fund, and procedures for claims and appeals to the DERT Fund. The proposed rules were published in the May 17, 2004, Missouri Register. The publication of these proposed rules opened the formal public comment period that lasted from the May 17, 2004, publication date until midnight on June 25, 2004.

On June 16, 2004, the Commission held a public hearing on the DERT Fund proposed rulemaking (10 CSR 25-17.010 through 10 CSR 25-17.170). No comments were offered during the meeting. Written comments were received from Ms. Carol Eighmey of the Petroleum Storage Tank Insurance Fund and Mr. Bill Wilder of the Missouri Department of Transportation.

The department made changes to the rules based upon the comments provided. These changes clarified the rules and did not result in any additional requirements or costs to implement the rules as included in the proposed rules or fiscal notes published in the May 17, 2004, Missouri Register.

These 17 new rules will guide cleanup and mitigate releases of chlorinated dry cleaning solvents from active and abandoned dry cleaner sites and provide financial recourse for such mitigation. These rules provide a regulated funding means to conduct cleanups where soil, groundwater, and surface water contamination results from releases by chlorinated dry cleaning solvents at active and abandoned dry cleaning sites. The State Coalition for the Remediation of Drycleaners estimates that 75 percent of active dry cleaner sites are contaminated with dry cleaner solvent (www.drycleancoalition.org/survey).

Many abandoned dry cleaner sites remain unused and cannot be sold in a property transaction due to actual or perceived contamination problems. Active sites that have contamination or perceived contamination may also be difficult to sell.

The rulemaking allows for better protection of human health and the environment from remediation of these contaminants or by reducing the exposure to the risks posed by the contamination. This will generate an economic benefit by allowing property transactions at active and former dry cleaning facilities and keeping or returning these properties to productive use. Without this rulemaking to establish the procedures for implementing these tasks, there would not be a mechanism for accomplishing environmental cleanups at active and former dry cleaning sites as envisioned by the original legislation. Many of these sites now sit abandoned due to contamination problems and without the rulemaking, these sites would remain vacant and unused, as well as ineligible for remediation using the fund.

The Final Order of Rulemaking on the 17 DERT Fund rules was adopted by the Commission during the August 5, 2004 commission meeting and subsequently filed with the Joint Committee on Administrative Rule (JCAR) on August 24, 2004.

On September 16, 2004, a hearing was held before the Joint Committee of Administrative Rules on the Final Order of Rulemaking for the DERT Fund. The JCAR heard testimony from Associated Industries of Missouri (AIM) in opposition to the Order of Rulemaking. It was AIM's position that the Order of Rulemaking should be voided because the department did not have the Order of Rulemaking in place by the statutory deadline of July 1, 2002 (Section 260.905, RSMo).

The department and other parties, including three operators of dry cleaning facilities, gave testimony in favor of the Order of Rulemaking.

The JCAR introduced two motions during the hearing. The JCAR adopted the first motion to "disapprove the Order of Rulemaking," and a second motion to "recommend that this committee send a letter to the General Assembly, that would be addressed to the Speaker and to the President Pro Tem, to take the statutory structure and move those dates forward to keep that same five year time frame in place. Move those dates forward so that 2002 becomes 2007 on the rulemaking authority, the 2007 sunset date to 2012, etcetera, allowing DNR to come in and re-establish a set of rules that are probably going to look very similar to this."

Under Executive Order 97-97, the Final Orders of Rulemaking were placed "in abeyance" until the General Assembly had 30 legislative days to enact a concurrent resolution to disapprove the Order of Rulemaking. The resolution would then be subject to the Governor's approval or veto. The deadlines for the Final Orders of Rulemaking were put on "hold" with the Secretary of State until the period was over or some action was taken.

Hazardous Waste Program staff met with legal counsel and the Attorney General's Office on September 23, 2004, to determine a course of action in this matter. The surcharges are

required by law and would continue to be collected. The DERT Fund could continue the direct costs of administration under Section 260.920 for the costs of surcharge collections, program development, and database development. The statute does not provide for the expenditures of monies without a rule in place, therefore, the three pilot projects that were started to help develop the cleanup oversight and reimbursement procedures of the DERT Fund were suspended.

The department recommended that the Commission withdraw the Order of Rulemaking for the DERT Fund rules filed with the JCAR on August 24, 2004. The Commission approved the withdrawal of the DERT Fund rules. This withdrawal order was filed with the JCAR on December 23, 2004 and published in the February 1, 2005, *Missouri Register*.

The department reconvened meetings with the DERT Fund rule stakeholder work group to discuss the JCAR hearing and proposed rules for the program. These meetings were reconvened on November 9, 2004 and concluded on June 23, 2005.

The department briefed the Commission on legislation during its meeting of June 9, 2005. The department requested approval to post the Regulatory Impact Reports in accordance with House Bill 980 (2004) and begin the process of rulemaking.

The Commission granted approval for the department to post the Regulatory Impact Reports to begin the process of rulemaking for the DERT Fund. Copies of the proposed rules, stakeholder meeting notes, stakeholder comments, regulatory impact reports, small business impact statements, and additional information regarding the rulemaking were posted on the department's website.

On July 17, 2005, the Regulatory Impact Reports were posted on the internet, in the St. Louis Suburban Journal and Kansas City Star Newspapers, the St. Louis and Kansas City Public Libraries and 27 other public libraries. Letters of notification were also sent to all active dry cleaning facilities and solvent suppliers. This information was also distributed through public service announcements and via electronic mail to the DERT Fund and other departmental stakeholder groups.

These reports were posted for public comment for at least 60 days before the proposed rules were filed with the Joint Committee on Administrative Rules and the Secretary of State's Office. The proposed rules were published in the November 1, 2005 *Missouri Register* (Vol. 30, No. 21).

A public hearing was held during the Commission meeting on December 9, 2005, and the public comment period on the proposed rules concluded on December 16, 2005. The department did not receive any comments on the proposed rules during the public comment period.

On February 1, 2006, the Orders of Rulemaking on the proposed rules were presented to and subsequently adopted by the Commission. The Orders of Rulemaking were then filed with the Joint Committee on Administrative Rules on February 10, 2006.

On March 13, 2006, the Orders of Rulemaking on the proposed rules were filed with the Secretary of State's Office and subsequently published in the April 17, 2006 *Missouri Register* (Vol. 31, No. 8) and April 30, 2006 Code of State Regulations. The rules were effective and thereby became regulation on May 30, 2006.

2005 Legislation

In the 2005 legislative session, Senate Bill 170 and Senate Bill 225 were passed and both bills included language regarding the DERT Fund. These bills made several significant changes to the statutes regarding the DERT Fund. These are discussed below.

1. The date for the Hazardous Waste Management Commission to promulgate rules was changed from July 1, 2002 to July 1, 2007.
2. The date for abandoned dry cleaning facilities to notify the DERT Fund was changed from July 1, 2004 to July 1, 2009.
3. The date of the sunset of the DERT Fund was changed from August 28, 2007 to August 28, 2012.
4. Dry Cleaning facilities that use non-chlorinated solvents are exempt from the statute.

Governor Matt Blunt signed Senate Bill 170 and Senate Bill 225 into law on July 6, 2005 and July 7, 2005, respectively.

Receipts to the DERT Fund

The Hazardous Waste Program is responsible for the collection of all applicable surcharges from dry cleaning facilities and solvent suppliers.

There are two sources of revenue for the DERT fund. The first is a dry cleaner facility annual registration surcharge paid by owners and operators of dry cleaning facilities (\$500, \$1,000, or \$1,500 based on solvent use). The second is a solvent surcharge paid by the solvent suppliers on a quarterly basis of \$8 per gallon of tetrachloroethylene (perchloroethylene), trichloroethylene, and other chlorinated solvents sold.

**Table 1: Dry Cleaner Facility Annual Registration Surcharge for
Calendar Year 2004**

Size of dry cleaner	Number of gallons of chlorinated solvent used	Annual registration fee
Small	0 to 140	\$500
Medium	141 to 360	\$1,000
Large	>360	\$1,500

Table 2 describes surcharge collections. The annual facility registration fee is calculated based on solvent use during the previous calendar year. The collection of annual dry cleaning facility registration surcharges began on April 1, 2001. Collection of the solvent surcharge began with the April 1, 2001 to June 30, 2001 quarter.

Table 2: Receipts to the DERT Fund (1)

Calendar Year	Dry Cleaner Registration Surcharge	Solvent Surcharge	Interest and Penalties	Totals
2000	\$0.00	\$0.00	\$0.00	\$0.00
2001	\$221,500	\$170,208	\$5,955	\$397,663
2002	\$222,150	\$435,859	\$17,886	\$675,895
2003	\$303,126	\$427,880	\$26,892	\$757,898
2004	\$319,488	\$409,292	\$43,179	\$771,959
2005	\$234,150	\$367,598	\$73,595	\$675,343
TOTALS	\$1,300,414	\$1,810,837	\$167,507	\$3,278,758

(1) Source: SAM II Data Warehouse Information

Disbursements from the DERT Fund

Expenditures of the DERT Fund are used to reimburse participants for the costs of addressing releases of chlorinated solvents from dry cleaning facilities and to administer the program by collecting the surcharges and guiding and assisting the cleanup activities. Participants are liable for the first twenty five thousand dollars of cleanup related costs as a “deductible”.

Three pilot projects were underway in 2004. The department suspended these projects based on the outcome of the September 16, 2004 JCAR hearing. With the governor’s signing of Senate Bills 170 and 225 into law in July 2005, the pilot projects were notified in August 2005 that they could proceed but no work was conducted during the remainder of the year. The department did receive a claim for reimbursement from one of the pilot projects during the year; however, the claim review was ongoing at the end of 2005. For these reasons, no disbursements for cleanup costs were made during 2005.

Table 3: Expenditures of the DERT Fund ⁽¹⁾ by Calendar Year

	2000 (2)	2001 (2)	2002 (2)	2003	2004	2005
Salaries & Wages	\$0.00	\$0.00	\$1,162	\$77,270	\$106,083	\$99,582
Expense & Equipment	\$0.00	\$0.00	\$0.00	\$14,994	\$59,642	\$63,912
Fringe, etc. (4)	\$0.00	\$0.00	\$2,350 (3)	\$35,655	\$73,437	\$92,528
Depreciation Expenses	\$0.00	\$0.00	\$0.00	\$237	\$1,561	\$1,646
TOTAL COSTS	\$0.00	\$0.00	\$3,512	\$128,157	\$240,723	\$257,668

(1) Source: SAM II Data Warehouse Information

(2) RSMo, Section 260.925 prohibited expenditures from the DERT Fund until on or after July 1, 2002

(3) House Bill 1115, Section 15.220, RSMo, authorized a transfer of \$1,289 out of the State Treasury on May 6, 2002, chargeable to various funds, such amounts as are necessary for allocation of costs to other funds in support of the state's central services, to the General Revenue Fund.

(4) Fringe amount includes OASDI, Retirement Sys, Deferred Comp, MCHCP, Cost Allocation Plan (OA), Cost Allocation (DNR), State Office Bldg M&R, etc.

Actual Fund Balance as of December 31, 2005 was \$2,670,930.

Eligibility for Funding

The owner or operator of an active dry cleaning facility or the owner or past operator of an abandoned facility can apply for eligibility to the DERT Fund. Governmental entities that own or are in possession and control of an abandoned facility otherwise eligible for coverage can apply to the DERT Fund as well.

Laundry facilities located in prisons, government entities, hotels, motels, and industrial laundries are specifically exempt from eligibility for and the requirements of the DERT Fund, according to the statute. Based on the passage of new legislation, dry cleaning facilities using non-chlorinated solvents are exempt from the DERT Fund.

Application and Claim Procedures

The department prepared a tool kit containing materials regarding the DERT Fund that were distributed at the DERT Fund seminars conducted throughout the state in the spring of 2006. The discussion at these seminars included topics such as:

- What is the DERT Fund;
- How to register an active dry cleaning facility;
- Process of conducting investigations and corrective actions; and
- Application, claim and reimbursement procedures.

The tool kit, forms and other materials concerning the DERT Fund are available on the DERT Fund's web site at <http://www.dnr.mo.gov/env/hwp/dert/hwpvc-p-dryclean.htm>.

The Prioritization of Sites for Expenditures from the Fund

Reimbursement of the DERT Fund monies will be accomplished based on the site prioritization method described in Section 260.910, RSMo.

The rulemaking allocates DERT Fund monies to prioritized sites in the following proportions: High priority sites: 60%; Medium priority sites: 30%; Low priority sites: 10%. In any fiscal year, if the funding allocation in any priority category is not used, those funds may be reallocated to other priority categories, starting with any high priority sites and followed by medium and then low priority sites.

Sites applying to the program must have one soil, groundwater, or surface water sample that exhibits contamination of a dry cleaner solvent that is in excess of the department cleanup levels. This initial assessment will allow the department to determine the eligibility of the site in the DERT Fund. Some sites will provide enough information during the application process to receive a ranking score. Other sites will require

additional information before a ranking score can be determined. If the site has not provided enough information to have a ranking score determined, the department will direct the owner or operator to conduct the necessary assessments to determine a ranking score. The ranking is to be based on such factors as environmental contamination, potential economics, potential receptors, risk based remediation parameters, site history, threat to drinking water sources, threat to off-site properties, etc.

The department will post a priority list of dry cleaning sites that have applied to the DERT Fund on the web site. A copy of the prioritization form can be found on the DERT Fund's web site at <http://www.dnr.mo.gov/env/hwp/dert/hwpvcp-dryclean.htm>.

Extent of Corrective Action

The department reviewed 12 on-going remediation sites at eligible abandoned dry cleaning facilities enrolled in the Brownfields/Voluntary Cleanup Section and chose three sites to participate as pilot projects. They are: (1) Tri-States Service Company – Boonville Ave., Springfield, MO (2) Tri-States Service Company – E. Trafficway, Springfield, MO (3) Kings Highway Retail, Sikeston, MO. The sites were chosen based on data that indicated that these sites would score as high priority sites according to the established criteria.

As mentioned previously, the department suspended these projects based on the outcome of the September 16, 2004 JCAR hearing. The department notified these sites in August 2005 that the work approved by the DERT Fund could resume due to the governor's signing of Senate Bills 170 and 225 into law. Subsequently, the department received a claim for reimbursement from the Tri-States–Boonville Ave site for the groundwater recovery work previously approved of. The review of this claim was ongoing at the end of the year.

At the end of 2005, the department had 21 former and active dry cleaning facilities enrolled in the Brownfields/Voluntary Cleanup Program. These site may be eligible to receive reimbursement for cleanup activities under the DERT Fund. As of this writing we are transitioning some sites from the BVCP to DERT.

Compliance with Surcharges

The two main sources of revenue for the DERT fund are the dry cleaner facility annual registration surcharge paid by the owners and operators of dry cleaning facilities and the solvent surcharge paid by the solvent suppliers on a quarterly basis. Law requires that these surcharges be paid.

When a facility or solvent supplier is not in compliance with law, the DERT Fund utilizes the department's conference, conciliation and persuasion process to return them to compliance. Now that the DERT Fund rules are in effect, the Hazardous Waste Program

will begin referring facilities and solvent suppliers that fail to return to compliance after the above process to the Attorney General's Office.

A key feature of the DERT Fund is that dry cleaners who pay into the fund, and are in compliance with the law, are eligible to receive funding for environmental cleanups from the DERT Fund. Consequently, it is in everyone's interest to assist businesses in returning to compliance with the law so that they are covered by the fund.

The table below indicates the compliance rate for annual dry cleaning facility registration surcharges. Failure to pay the annual dry cleaning facility registration surcharges represents 90-95% of the violations that occur in the DERT Fund.

Table 4: DERT Fund Dry Cleaning Facility Compliance

Calendar Year	Number of Active Dry Cleaning Facilities	Sites Submitting Registration Form & Surcharges	Percent Compliance with Annual Facility Registration
2005	334	225	62.53

Table 5: DERT Fund issues referred to the Hazardous Waste Program's Compliance/Enforcement Section

Calendar Year	NOV's issued	Facilities Referred to Compliance/ Enforcement	Facilities Referred to Attorney General's Office	Facilities Returned to Compliance
2005	102	101	0	259

Outreach Activities

The department has posted a Web site that provides publications, forms, information and answers to questions about the DERT Fund. This web site can be viewed at <http://www.dnr.mo.gov/env/hwp/dert/hwpvcvcp-dryclean.htm>.

With the withdrawal of the initial Order of Rulemaking in December 2004, the department reconvened its meetings with the DERT Fund rule stakeholder work group. Letters were sent to the dry cleaning facilities and solvent suppliers announcing the stakeholder meetings.

The Hazardous Waste Management Commission granted approval for the department to post the Regulatory Impact Reports to begin the process of Rulemaking for the DERT Fund. Copies of the proposed rules, stakeholder meeting notes, stakeholder comments, regulatory impact reports, small business impact statements, and additional information regarding the rulemaking were posted on the department's website.

On July 17, 2005, the Regulatory Impact Reports were posted on the internet, in the St. Louis Suburban Journal and Kansas City Star Newspapers, the St. Louis and Kansas City Public Libraries, 27 other public libraries. Letters of notification were also sent to all active dry cleaning facilities and solvent suppliers. This information was also distributed through public service announcements and via electronic mail to the DERT Fund and other departmental stakeholder groups.

These reports were posted for public comment for at least 60 days before the proposed rules were filed with the Joint Committee on Administrative Rules and the Secretary of State's Office. The proposed rules were published in the November 1, 2005 *Missouri Register* (Vol. 30, No. 21).

The department distributed the first DERT newsletter on April 20, 2004. This newsletter is regularly distributed to dry cleaning facilities and is intended to keep the industry up to date on issues involving the industry, the DERT Fund, and cleanup efforts at active and abandoned dry cleaner sites.

As the rule making process entered its final stages in the spring of 2006 the department conducted eight (8) seminars about the DERT Fund. Seminars were conducted in St. Louis (2), Kansas City (2), Jefferson City, Macon, Springfield and Poplar Bluff. The discussions at these seminars included topics such as: general information about the DERT Fund, the process of conducting investigations and corrective actions at dry cleaning sites and the application, claim and reimbursement process. The DERT Fund tool kit and other materials concerning the fund were distributed at the seminars and are available on the DERT Fund's website as well.

The department is a member of the State Coalition for the Remediation of Drycleaners, which is comprised, of states that have formal dry cleaner cleanup programs. This coalition, is funded by the United State Environmental Protection Agency Technology Innovation Office through the National Groundwater Association. The coalition meets once a month, via conference call or meeting, to discuss issues related to dry cleaner program administration and technical site investigation or remediation topics. The coalition serves as an invaluable asset for Missouri as the department develops and manages the DERT Fund and begins site assessments and remediation of dry cleaner sites.

References

State Program To Clean Up Drycleaners. Schmidt, Robin, R. DeZeeuw, L. Henning and D. Trippler. June 2001. State Coalition for Remediation of Drycleaners.
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